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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/072,823   | 02/08/2002  | Sophie Chen          | NOV-0001            | 1435             |
| 23413  | 7590        | 07/28/2004           | EXAMINER            |                  |
| CANTOR COLBURN, LLP<br>55 GRIFFIN ROAD SOUTH<br>BLOOMFIELD, CT 06002 |             |                      | MELLER, MICHAEL V   |                  |
|  |             |                      | ART UNIT            | PAPER NUMBER     |
|  |             |                      | 1654                |                  |
| DATE MAILED: 07/28/2004  |             |                      |                     |                  |

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/072,823

Applicant(s)

CHEN, SOPHIE

Examiner

Michael V. Meller

Art Unit

1654

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 May 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-9, 11-16, 18-23, 26-29, 32-35 are is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1-9, 11-16, 18-23, 26-29, 32-35 are is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |  |
|---|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date, _____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)              |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____. | 6) <input type="checkbox"/> Other: _____.  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-9, 11-16, 18-23, 26-29, 32-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 57167938, GB 1476016 or JP 352102434 taken with JP 11236334 or JP 52145509.

Applicant has argued that the types of cancer being treated are different in the various references. The references teach using the individual components to treat cancer. The references do not have to teach applicants' use. The references just happen to teach that the individual components can be used to treat cancer. This in and of itself would have motivated one of ordinary skill in the art to use the two components together to produce the same composition as claimed. That is all that is required by patent law. There is no unpredictability as applicant suggests. The individual components are known to be used individually in the art for the same purpose, namely, to treat cancer.

Applicant next argues that the case law cited is not appropriate for this case. The case law cited is just that, law. These cases are routinely used in the pharmaceutical arts and this case involves a plant extract which does not need FDA approval, so technically it is a natural pharmaceutical not as applicant has

Art Unit: 1654

suggested. The plant extract art is well settled and the known treatments from these plants are well known as is evidenced by the references.

Applicant asks why the examiner says that the plant extracts do not need FDA approval. This is because they are natural products, i.e. they are not synthetically made. Thus, there is nothing unpredictable about them.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael V. Meller whose telephone number is 571-272-0967. The examiner can normally be reached on Monday thru Thursday: 9:30am-6:00pm.

Art Unit: 1654

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bruce Campell can be reached on 571-272-0974. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in dark ink, appearing to read 'M. V. Meller', followed by a long horizontal line extending to the right.

Michael V. Meller  
Primary Examiner  
Art Unit 1654

MVM